

No. 12029

United States
Court of Appeals

for the Ninth Circuit

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

SALLY KAYE,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

OCT 5 - 1948

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
1206 Santee St.,
Los Angeles 15, Calif.

For Appellee:

H. MILES RASKOFF,
617 S. Olive St.,
Los Angeles 14, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Southern District of California,
Central Division

No. 7763-Y

TIGHE E. WOODS, Acting Housing Expediter,
Office of the Housing Expediter,

Plaintiff,

vs.

SALLY KAYE, DOE I and DOE II,

Defendants.

COMPLAINT FOR RESTITUTION AND
INJUNCTION OF A FIRST CAUSE
OF ACTION

I.

Plaintiff as Housing Expediter, Office of the Housing Expediter, brings this cause of action for restitution pursuant to Section 205(a) to enforce compliance with Section 4 of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and the Rent Regulations (10 Fed. Reg. 13528) issued by the Administrator pursuant to Section 2 of the Emergency Price Control Act of 1942, as amended, and/or brings this cause of action pursuant to Section 206 of the Housing and Rent Act of 1947, and the Rent Regulations issued pursuant thereto.

II.

Jurisdiction of this cause of action is conferred upon this Court by Section 205(c) of the Emergency

Price Control Act of 1942, as amended, [2] and/or Section 206 of the Housing and Rent Act of 1947.

III.

At all times mentioned herein, up to and including June 30, 1947, there was in effect a Rent Regulation for Housing issued pursuant to Section 2(b) of the Emergency Price Control Act of 1942, as Amended, for the Los Angeles Defense Rental Area, and/or on and since July 1, 1947 the housing accommodations herein described have been subject to maximum rents authorized and established by the Housing and Rent Act of 1947, and rent regulations issued pursuant thereto.

IV.

That the defendants, Doe I and Doe II, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued.

V.

That the defendant is a resident of the City of Laguna Beach, County of Orange, State of California, in the Southern District of California, in the Central Division thereof, and within the jurisdiction of this Court.

VI.

During all times herein mentioned defendant has received rent for the use and occupancy of those certain housing accommodations, subject to said Acts and Regulations within said Defense Rental Area, known and described as 469 Poplar Street, Laguna Beach, California.

VII.

Defendant received from persons for the use and occupancy of the hereinafter described accommodations rents in excess of the maximum rents established by said Rent Regulations; that there is attached hereto and by [3] reference made a part hereof, as though fully set out herein, a statement of the names of the persons overcharged, the period of occupancy of such persons, the maximum rent, the rent received from said persons, and the amount of overcharges.

FOR A SECOND CAUSE OF ACTION

I.

Plaintiff re-alleges and incorporates herein Paragraphs I, II, III, IV, V, VI and VII of his first cause of action as though set out in full herein.

II.

In the judgment of the Housing Expediter, Office of the Housing Expediter, said defendants have engaged in acts and practices in violation of Section 4(a) of the Emergency Price Control Act of 1942,

as amended, USCA Title 50, App. Sec. 901 et seq., and/or in violation of Section 206(a) of the Rent and Housing Act of 1947, which acts and practices consist of violations of Rent Regulations for Housing (10 Fed. Reg. 13528) issued in accordance with Section 2(b) of the Emergency Price Control Act of 1942, as amended, and/or the Housing Regulation issued pursuant to the Housing and Rent Act of 1947, and therefore the Housing Expediter brings this cause of action pursuant to the provisions of Section 206 of the Housing and Rent Act of 1947. Jurisdiction of this cause of action is conferred by Section 206 of the Housing and Rent Act of 1947.

Wherefore, the plaintiff demands:

A. That the defendant be ordered and directed to tender to all available tenants as are entitled thereto a refund of all amounts in excess of the maximum rents established by the Emergency Price Control Act of 1942, as amended, and Regulations issued thereunder, and/or the Housing and Rent Act of 1947, and Regulations issued thereunder, which were received by the defendant, his agents, servants, employees and attorneys from said persons as rent for the use and occupancy of the housing accommodations described in the complaint, since the date maximum rents were established therefor by [4] said Acts and said Regulations.

B. A preliminary and final injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert or participation with them from directly or indirectly demanding

or receiving for accommodations subject to the Rent Regulations issued pursuant to the Housing and Rent Act of 1947, rents in excess of the maximum rents permitted under the Rent Regulations issued pursuant to the Housing and Rent Act of 1947.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ RICHARD G. SOLOF,
Attorneys for Plaintiff. [5]

Housing accommodations located at 469 Poplar Str., Laguna Beach, California.

Unit—House.

Tenant's name—Ann Mailo.

Period of Overcharges—9-23-46 to 5-23-47.

Amount Rent Paid Month—\$150.00.

Maximum Legal Rent Month—\$75.00.

Amount of Overcharges—\$600.00.

Statement referred to in Paragraph VII of Plaintiff's First Cause of Action.

[Endorsed]: Filed Nov. 13, 1947. [6]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Sally Kaye, and in answer to plaintiff's complaint herein, for herself and for none of her co-defendants, admits, denies and alleges as follows:

I.

Having no information or belief with respect to the allegations of paragraph "IV" of the First Cause of Action alleged in said complaint, and placing her denial on that ground, defendant denies generally and specifically each and every allegation contained therein.

II.

Answering paragraph "V" of the First Cause of Action alleged in said complaint, this answering defendant denies generally and specifically each and every allegation therein contained. In this connection this answering defendant alleges that she is a resident [7] of the City of Oxnard, County of Ventura, State of California.

III.

Answering paragraph "VII" of the First Cause of Action alleged in said complaint, this answering defendant denies generally and specifically each and every allegation contained in said paragraph and in the schedule incorporated in said paragraph by reference.

By way of answer to the alleged Second Cause of action contained in said complaint, this answering defendant admits, denies and alleges as follows:

I.

Answering paragraph "I" of said alleged Second Cause of Action, and particularly paragraphs "IV", "V" and "VII" of the First Cause of Action which are incorporated by reference in paragraph "I" of the Second Cause of Action, this

answering defendant realleges and incorporates herein paragraphs "I," "II" and "III" of her answer to the First Cause of Action as though set out in full herein.

II.

Answering paragraph "II" of said Second Cause of Action in said complaint, this answering defendant denies generally and specifically each and every allegation therein contained.

Wherefore, this answering defendant prays that this plaintiff take nothing by his action; that the said complaint be hence dismissed; for defendant's costs of suit incurred herein and for such other and further relief as to the Court may seem meet and proper in the premises.

/s/ N. MILES RASKOFF,
Attorney for defendant,
Sally Kaye.

(Duly Verified.)

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 2, 1948. [8]

[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR ADMISSIONS PURSUANT TO RULE 36

Plaintiff, pursuant to Rule 36 of the Federal Rules of Civil Procedure, requests the defendant Sally Kaye, within ten days after service of this request, to make the following admissions for the

purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That at all times pertinent to this action the defendant Sally Kaye was the landlord of the housing accommodations situated at 469 Poplar Street, Laguna Beach, California.

2. That the said premises are within the Los Angeles Defense Rental Area.

3. That on May 19, 1947 the Area Rent Director for the Los Angeles Defense Rental Area issued an order establishing the maximum rent of a house located at 469 Poplar Street, Laguna Beach, California, effective from September 23, 1946. A copy of said order is attached hereto, marked Exhibit "A". [10] The original of said order is on file with the Rent Litigation Unit of the Office of Rent Control, Office of the Housing Expediter and is available for examination by the defendant or her attorney.

4. That Exhibit "A" is in words, figures and substance a copy of said order issued by the Area Rent Director on May 19, 1947.

5. That Exhibit "A", a copy of which is attached hereto, is genuine.

6. That defendant, Sally Kaye, received a copy of said order marked Exhibit "A" on or about May 19, 1947.

7. That one, Ann Mailo, used and occupied the premises located at 469 Poplar Street, Laguna Beach, California, from September 23, 1946, to June 1, 1947.

8. That the defendant Sally Kaye, through her agent Roy W. Peacock and Son, received from said Ann Mailo the sum of \$150.00 as rent for the one month period from September 23, 1946 to October 23, 1946, for the use and occupancy of the above mentioned premises.

9. That on or about September 20, 1946 said Roy W. Peacock & Son, agents defendant Sally Kaye, executed and delivered to Ann Mailo a receipt in writing for the amount of \$150.00, stating on said receipt, "Rent, 469 Poplar Street". A copy of said receipt is attached hereto and marked Exhibit "B".

10. That Exhibit "B", a copy of which is attached hereto, is genuine.

11. That the defendant Sally Kaye, through her agent, Peter Kaye, received the sum of \$50.00 each month during the 7 months for the period commencing October 23, 1946 and ending May 23, 1947, for the use and occupancy of the above described premises.

12. That on or about October 20, 1946, said Peter Kaye, agent of defendant Sally Kaye, executed and delivered to Ann Mailo a receipt in writing for the amount of \$50 as part of the rent for the use and occupancy of the above mentioned premises for the one month period from October 23, 1946 to November 23, 1946. A copy of said receipt is attached hereto and marked Exhibit "C". [11]

13. That Exhibit "C", a copy of which is attached hereto, is genuine.

14. That said Ann Mailo was never given a receipt by said Peter Kaye, showing rent paid for

the use and occupancy of the above described premises, at any time during the period commencing November 23, 1946 and ending May 23, 1947.

15. That the defendant Sally Kaye received from Ann Mailo the sum of \$100.00 each month during the seven months for the period commencing October 23, 1946 and ending May 23, 1947, as part of the rent for the use and occupancy of the above described premises.

16. That said Ann Mailo was never given a receipt by the defendant Sally Kaye, showing rent paid each month for the use and occupancy of the above described premises, at any time during said period commencing October 23, 1946 and ending May 23, 1947.

17. That as of the date of filing this suit more than 31 days had elapsed since the demand and receipt of rent and the tenant above named has not instituted any action against the defendants, pursuant to Section 205(e) of the Emergency Price Control Act of 1942, as amended, prior to the institution of this suit.

Dated: Los Angeles, California, this 13th day of February, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ ASHER SCHEIR,
Attorneys for Plaintiff. [12]

EXHIBIT A

Copy From Area Files (pjb 10-21-47)

OPA Form D-36 (Rev. 3-46)

Stamp of Issuing Office: Office of Housing Expediter, Office of Rent Control, 217 West Second Street, Santa Ana, California.

United States of America
Office of Price Administration

ORDER DECREASING MAXIMUM RENT
REQUIRING REFUND TO TENANT

Concerning (Address of Accommodations) 469 Poplar Street, Laguna Beach, California.

Docket No. 76473.

To: (Name and Address of Landlord) Mrs. Sally Kaye, Oxnard Union High School, Oxnard, California.

To: (Name and Address of Tenant) Tenant-Occupant, 469 Poplar Street, Laguna Beach, Calif.

The Rent Director, after consideration of all the evidence in this matter, has determined that the Maximum Rent for the above-described housing accommodations should be decreased on the grounds stated in Section(s) 5(c)1 of the Rent Regulation, and further for the reason(s) stated in Section(s) 4(e) of the Rent Regulation, the Maximum Rent so decreased and determined by this Order shall be effective from September 23, 1946.

Therefore, it is ordered that the Maximum Rent for the above-described accommodations be, and it hereby is, decreased from \$150.00 per month, to

\$75.00 per month, effective from September 23, 1946. No rent in excess of \$75.00 month (maximum rent established by this order) may be received or demanded.

Landlord pays water.

Any rent collected from the effective date of this Order in excess of the amount provided in this Order shall be refunded to the tenant within 30 days from the date this Order is issued unless the refund is stayed in accordance with the provisions of Section 1300.214 or 1300.225 of Revised Procedural Regulation No. 3.

This Order is now in effect and will remain in effect until changed by the Office of Price Administration.

Issued this 19th day of May, 1947.

.....

Area Rent Director for the Los Angeles Defense-Rental Area. [13]

EXHIBIT "B"

Roy W. Peacock & Son
Realtors and Insurors
295 Forest Ave. Phone 150

No.

Laguna Beach, Calif. 9/20 1946

Received of Ann Mailo One Hundred, fifty & 00/100 Dollars for Rent 469 Poplar Str. Amount Paid \$150.00. Balance Due \$.

ROY W. PEACOCK & SON,
By /s/ RIN.

EXHIBIT "C"

Received Ann Mailo,
Fifty Dollars

10/20/46

PETER KAYE

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 16, 1948. [14]

[Title of District Court and Cause.]

DEFENDANT'S ANSWER TO PLAINTIFF'S
REQUEST FOR ADMISSION PURSUANT
TO RULE 36

Comes now the defendant, Sally Kaye, and by way of answer to plaintiff's request for admissions heretofore filed and served in the above-entitled cause, this defendant admits, denies and alleges as follows:

I.

Admits paragraphs numbered "1" and "2".

II.

With reference to paragraph "3", defendant, Sally Kaye, denies that the order of the Area Rent Director dated May 19, 1947, referred to in said paragraph, established the maximum rent for the house located at 469 Poplar Street, Laguna Beach, California, which was effective from September 3, 1946, or at all. In this connection, defendant, Sally Kaye, alleges that the said order was [16] invalid and of no force and effect.

III.

Admits the allegations of paragraphs numbered "4" and "5" except that this defendant denies that said Exhibit "A" is a valid order and alleges in this connection that it is of no force and effect.

IV.

Admits the allegations of paragraph "6".

V.

Denies the allegations of paragraph "7" and in this connection defendant, Sally Kaye, alleges that the said Ann Mailo and certain other persons used and occupied the premises located at 469 Poplar Street, Laguna Beach, California, from September 23, 1946, to June 7, 1947.

VI.

Denies the allegations of paragraph "8".

VII.

Defendant, Sally Kaye, has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "9", "10", "12", "13" and "14", and for this reason this answering defendant denies each and every allegation in said paragraphs contained.

VIII.

Denies the allegations of paragraph "11".

IX.

Admits the allegations of paragraphs "15" and "17".

X.

Defendant, Sally Kaye, does not have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "16" in that

this answering defendant does not now recall whether or not she ever gave a receipt for rent to the said Ann Mailo, and for this reason this answering defendant cannot [17] truthfully either admit or deny the allegations of said paragraph "16".

Dated at Los Angeles, California, this 26th day of February, 1948.

/s/ H. MILES RASKOFF,
Attorney for defendant,
Sally Kaye.

(Duly Verified.)

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Mar. 4, 1948. [18]

[Title of Tax Court and Cause.]

OBJECTIONS TO DEFENDANT'S PROPOSED
FINDINGS OF FACT AND CONCLU-
SIONS OF LAW

Comes now the plaintiff by Frank L. Hirst, his attorney, and objects to the defendant's proposed findings of fact and conclusions of law as follows:

I.

Said defendant's findings of fact failed to allege the jurisdictional facts which this Honorable Court must of necessity have determined to exist. The plaintiff therefore submits the following findings in this regard:

II.

(a) That the plaintiff as Housing Expediter, Office of the Housing Expediter, is the proper party plaintiff duly authorized to bring this action under and pursuant to the Housing and Rent Act of 1947, as amended.

(b) That this Court has jurisdiction of the defendant, Sally Kaye, and of the subject matter of this action. [20]

(c) That at all times pertinent to this action the Controlled Housing Rent Regulation issued under and pursuant to the Housing and Rent Act of 1947, as amended, was in full force and effect in the Los Angeles Defense Rental Area.

III.

Plaintiff objects to the use of the word "filed" in Paragraph 9, Line 30. The evidence offered by the defendant, at most, established that the defendant, Sally Kaye, "deposited in the mail" a Rent Regulation Statement in triplicate, addressed to the Office of Price Administration, Santa Ana, California.

Plaintiff further objects to said Paragraph 9 for failure to include the undisputed evidence that the official files and records of the Office of the Housing Expediter, Orange County Division, located at 217 West Second Street, Santa Ana, California, the successor by law of the custody and control of the official files and records of the Office of Price Administration, located at Santa Ana, California, contained no record of said Registration Statement having been received in the mail or otherwise on

or about October 20, 1946, or at any time thereafter.

IV.

Plaintiff further objects to defendant's proposed findings of fact for failure to include the uncontradicted evidence that on or about February 21, 1947, pursuant to the request of the Office of Price Administration, the defendant, Sally Kaye, did file a Rent Registration Statement with said Office of Price Administration, located at Santa Ana, California, identifying said housing accommodations and reporting a maximum rent therefor in the sum of \$150.00 per month.

V.

Plaintiff also objects to Paragraph 10 of defendant's findings of fact for failure to refer to the express provision contained in said Order of May 19, 1947, ordering the defendant [21] to refund to the tenant any rent collected from the effective date of said order in excess of the amount provided in said Order within thirty days of the date of the issuance of said Order unless said refund provision was stayed in accordance with Sections 1300.214 and 1300.225 of Revised Procedural Regulation No. 3.

VI.

Plaintiff further objects to defendant's findings of fact for failing to include a finding that said defendant, Sally Kaye, had failed to refund to Ann Mailo the amount of rent collected in excess of \$75.00 per month for the period from September 23, 1946, to May 23, 1947, either within the thirty days from the date of said Order or at any

time thereafter, and that said defendant had failed to apply for and/or obtain a stay of the refund provisions in accordance with Sections 1300.214 or 1300.225 of Revised Procedural Regulation No. 3.

VII.

Plaintiff objects to defendant's proposed conclusions of law as set forth on Page 4 as follows:

As to Paragraph 1, beginning with the word "with" on Line 21 and ending with the word "condition" on Line 25. This does not constitute the reason which the Court expressly declared at the time of rendering its decision. The Court assigned the following reasons for its holding that said Order was invalid on its face, namely, that said housing accommodations had never been rented before and the Rent Director had failed to issue an Order within thirty days after the filing of a Registration Statement.

Dated this 14th day of April, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ FRANK L. HIRST,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 15, 1948. [22]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on the 18th day of March, 1948, and having been tried before the Court, sitting without a jury, Frank L. Hirst, Esq., appearing as counsel for the plaintiff, and H. Miles Raskoff, Esq., appearing as counsel for the defendant, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and after hearing the arguments of counsel, and being fully advised in the premises, and the cause having been submitted to the Court for decision, the Court now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

I.

That at all times pertaining to this action, defendant Sally Kaye, was the landlord of the housing accommodations situated at 469 Poplar Street, Laguna Beach, California. [24]

II.

That the said premises are within the Los Angeles Defense Rental Area.

III.

That the said housing accommodations had not been rented at any time prior to the 23rd day of September, 1946; and that said housing accommodations were first rented on the 23rd day of September, 1946, and the first rent charged for such ac-

commodations was the sum of One Hundred Fifty (\$150.00) Dollars a month, payable monthly, in advance, on the 23rd day of each calendar month.

IV.

That on or about the 23rd day of September, 1946, there was executed a written lease on said housing accommodations in which the defendant, **Sally Kaye**, was named as lessor, and one Anne Mailo was named as lessee, which written lease was signed by Peter Kaye, a minor son of defendant, Sally Kaye, as agent for said defendant Sally Kaye, the lessor named in said lease, and by the said Anne Mailo, as the lessee named in the said lease. That the term of said lease was for the period commencing on the 23rd day of September, 1946, and ending on the 1st day of June, 1947, and that the rental specified therein was the sum of One Hundred Fifty (\$150.00) Dollars a month, payable monthly, in advance, on the 23rd day of each calendar month for the term of said lease.

V.

That the rental for the first month of said term under said written lease, to-wit: the sum of One Hundred Fifty (\$150.00) Dollars, for the one month period from September 23, 1946, to October 23, 1946, was paid by the said Anne Mailo to that certain real estate firm at Laguna Beach, California, known as Roy W. Peacock & Son, and that of said sum Sixty (\$60.00) Dollars was retained by the said Roy W. Peacock & Son, as a commission, and the balance of Ninety (\$90.00) Dollars was paid by said real estate [25] firm to the defendant, Sally Kaye.

VI.

That thereafter, said Anne Mailo, the tenant of said housing accommodations, paid as rent the sum of One Hundred Fifty (\$150.00) Dollars on or about the 23rd day of the months of October, November and December, 1946, and January, February, March and April, 1947, by paying to the defendant, Sally Kaye, the sum of One Hundred (\$100.00) Dollars on each of said dates and to Peter Kaye, the son of said Sally Kaye, the sum of Fifty (\$50.00) Dollars, on each of said dates. That the said rentals paid covered the period from September 23, 1946, to May 23, 1947.

VII.

That the said Anne Mailo occupied said housing accommodations during and after said term to and including the 7th day of June, 1947, and that no rent whatsoever was paid by said Anne Mailo for the period from May 23, 1947, to June 7, 1947.

VIII.

That under the terms of said written lease, the said Anne Mailo was obligated to pay the telephone bills for said housing accommodations, which telephone was carried under the name of the defendant Sally Kaye. That said Anne Mailo paid each of said telephone bills during the period of her occupancy except the telephone bill for the last month of her term. That said last mentioned telephone bill was in the sum of Twenty-One and 65/100 Dollars (\$21.65) which was paid by the defendant, Sally Kaye, and not by said Anne Mailo.

IX.

Within thirty days after the said housing accommodations were first rented, to-wit: on or about the 20th day of October, 1946, the defendant, Sally Kaye, duly filed, in triplicate, a written statement on the form provided therefor, known as a registration statement, identifying the said housing accommodation and [26] specifying a maximum rent therefor in the sum of One Hundred Fifty (\$150.00) Dollars.

X.

That on or about the 19th day of May, 1947, the Area Rent Director for the Los Angeles Defense Rental Area of the Office of the Housing Expediter, issued an order purportedly decreasing the maximum rent for the said housing accommodations from One Hundred Fifty (\$150.00) Dollars per month to Seventy-five (\$75.00) Dollars per month, which said order provided, on the face thereof, by reference to Section 4(e) of the Rent Regulation for Housing, that the landlord had failed to file a registration statement for said housing accommodations within 30 days after the first renting thereof. That the said order indicated on the face thereof, by said reference, that for the aforementioned reason the reduction in rent was made retroactive to the 23rd day of September, 1946.

CONCLUSIONS OF LAW

I.

That the order decreasing the maximum rent on said housing accommodations, dated May 19, 1947,

was and is invalid on its face with respect to its purported retroactive application by reason of the limitation contained in Section 4(e) of the Rent Regulations for Housing promulgated by the Administrator under the Emergency Price Control Act of 1942, upon which said Regulation the said order was expressly conditioned.

II.

That the maximum rent for the aforesaid housing accommodations during the period involved in this cause was the sum of One Hundred Fifty (\$150.00) Dollars a month.

III.

That defendant is entitled to judgment.
Let judgment be entered accordingly.

Dated this 20th day of April, 1948.

/s/ LEON R. YANKWICH,
United States District Judge.

[Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 20, 1948. [27]

In the District Court of the United States, Southern District of California, Central Division

No. 7763-Y

TIGHE E. WOODS, Housing Expediter, Office of the Housing Expediter,

Plaintiff,

vs.

SALLY KAYE, et al.,

Defendants.

JUDGMENT

This cause came on regularly for trial on the 18th day of March, 1948, and the court having heard the testimony, having examined the proofs offered by the respective parties, and, after hearing the arguments of counsel, and being fully advised in the premises, and having made findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed:

That plaintiff shall take nothing by his action and that judgment be entered for the defendant.

Dated April 20, 1948.

/s/ LEON R. YANKWICH,

United States District Judge.

Judgment entered April 20, 1948. Docketed April 20, 1948. C.O. Book 50, page 248.

[Endorsed]: Filed April 20, 1948. [29]

12629

Case No. 1763-V
TIGHE, E. UNDRAS VS
PLF E

Date 3-8-48
Date 3-8-48
Clerk v. 2 District
John C. [Signature]
Deputy Clerk

IDENTIFICATION
IN EVIDENCE
Form DO-1
Form for Hotels and Rooming Houses

COPY FROM AREA FILES (pjb 10-21-47)

PLAINTIFF'S EXHIBIT No. 1

GENERAL INSTRUCTIONS
1. This form is to be filled out by the plaintiff or the defendant, as the case may be, and is to be filed with the court. It is to be filled out in triplicate, for each of the "D" and "E" if necessary.
2. Name of Landlord
3. Name of Tenant
4. Address of Tenant
5. Address of Landlord
6. Address of Tenant
7. Address of Landlord
8. Address of Tenant
9. Address of Landlord
10. Address of Tenant
11. Address of Landlord
12. Address of Tenant
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UNITED STATES OF AMERICA
OFFICE OF TEMPORARY CONTROLS
OFFICE OF PRICE ADMINISTRATION
TYPE OF PRINT PLAINLY - DO NOT FOLD
(Do Not Use This Form for Hotels and Rooming Houses)
IDENTIFIER: 1
1 469 Poplar St., Laguna Beach, Calif.
2
3. Number of Rooms in unit being rented: 6 Rm 2 Bath
4. Total Number of Units in Building: 1

SECTION A. MAILING ADDRESS OF LANDLORD
1. Name of Landlord Mrs. Sally Mayo
2. Name of Tenant Mrs. Sally Mayo
3. Address of Tenant Mrs. Sally Mayo
City and State Oxnard, California

SECTION B. MAILING ADDRESS OF TENANT
1. Name of Tenant Miss Ann Mello
2. Address of Tenant 469 Poplar St.
City and State Laguna Beach, Calif.

SECTION C. MAXIMUM RENT
Read carefully and fill in every item which applies to this dwelling unit.
1. Rent on "Maximum Rent date" \$ 150.00 per week () per month ()
2. Not rented on "Maximum Rent date" but rented at any time during the two-month period ending on "Maximum Rent date".
3. Rent on that date \$ 150.00 per week () per month ()
4. Rent on that date \$ 150.00 per week () per month ()
5. Substantially changed after "Maximum Rent date" but before the "effective date". Check one box if applicable:
6. Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.
7. THE MAXIMUM RENT FOR THIS DWELLING UNIT IS:
8. Order issued by Rent Director dated _____ per week () per month ()

SECTION D. EQUIPMENT AND SERVICES
1. EQUIPMENT
2. SERVICES
Are all equipment and services indicated above now included in the rent? ☒ Yes ☐ No
If "No", you must also file Form D-2

Section E. See Note Section C. 7.
If Item 2(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:
(a) New construction
(b) A change in the number of dwelling units
(c) A change from unfurnished to fully furnished
(d) A major improvement in the dwelling unit
(e) A change from unfurnished to fully furnished
(f) A major improvement in the dwelling unit
POSTMARKED 2/20/47 RECEIVED 2/21/47 10:30 A.M.
Santa Ana D.A.S.

WARNING
The rent for this dwelling unit and after the "Effective Date" can be no more than the Maximum Rent entered in Section C, Item 2.
A false statement on this form or an attempt to obtain a false statement on this form is a violation of the Espionage Laws, Title 18, U.S.C., Section 793 and 794, and is punishable by fine and imprisonment for not more than ten years, or both.
Sally Mayo
(Signature of Landlord or her Agent)

76473
Mar. 3, 1947
Mar 10, 1947
OFFICE 9-23-46

PLAINTIFF'S EXHIBIT No. 2

OPA Form D-36 (Rev. 3-46)

Stamp of Issuing Office: Office of Housing Expediter, Los Angeles Defense Rental Area, Orange County Division, 217 West Second Street, Santa Ana, California.

United States of America
Office of Price Administration

ORDER DECREASING MAXIMUM RENT
REQUIRING REFUND TO TENANT

Concerning (Address of Accommodations) 469
Poplar Street, Laguna Beach, California.

Docket No. 76473.

To: (Name and Address of Landlord) Mrs. Sally
Kaye, Oxnard Union High School, Oxnard, California.

To: (Name and Address of Tenant) Tenant-Occupant, 469 Poplar Street, Laguna Beach, Calif.

The Rent Director, after consideration of all the evidence in this matter, has determined that the Maximum Rent for the above-described housing accommodations should be decreased on the grounds stated in Section(s) 5(c)1 of the Rent Regulation, and further for the reason(s) stated in Section(s) 4(e) of the Rent Regulation, the Maximum Rent so decreased and determined by this Order shall be effective from September 23, 1946.

Therefore, it is ordered that the Maximum Rent for the above-described accommodations be, and it hereby is, decreased from \$150.00 per month, to \$75.00 per month, effective from September 23, 1946. No rent in excess of \$75.00 month (maximum rent established by this order) may be received or demanded.

Landlord pays water.

Any rent collected from the effective date of this Order in excess of the amount provided in this Order shall be refunded to the tenant within 30 days from the date this Order is issued unless the refund is stayed in accordance with the provisions of Section 1300.214 or 1300.225 of Revised Procedural Regulation No. 3.

This Order is now in effect and will remain in effect until changed by the Office of Price Administration.

Issued this 19th day of May, 1947.

/s/ B. C. KOEPKE,

Area Rent Director for the Los Angeles Defense-Rental Area. [32]

PLAINTIFF'S EXHIBIT No. 3

LEASE
(General)

This lease, made this 23d day of September, 1946, between Mrs. Sally Kaye, herein called lessor, and Ann Mailo, herein called lessee,

Witnesseth: That lessor, in consideration of the covenants and agreements herein contained, does

hereby lease, demise and let to lessee all that property in the 469 Poplar Street, Laguna Beach, County of Orange, State of California, described as: The Lessee is to pay all utilities and telephone. The Lessor is to pay for water and garbage hauling, together with the appurtenances, for the term of, commencing on the 23d day of September, 1946, and ending on the 1st day of June, 1947, at the monthly rental of One Hundred Fifty and 00/100 Dollars, payable in installments of Dollars, [33] lawful money of the United States, each due and payable in advance on the day of each and every during said term.

This lease is made by lessor and accepted by lessee on each of the following conditions and terms, to-wit:

Lessee hereby covenants and agrees as follows:

First: To pay lessor said rent as hereinabove provided, and in addition thereto to pay, when due, all water, electric, gas and other lighting, heating and power rents and charges accruing or payable in connection with said premises during said term, whether same are pro-rated or measured by separate meters;

Second: Not to assign, mortgage, or hypothecate this lease or any interest therein, or let or sublet the whole or any part of said premises, or make or suffer any alteration to be made in or on said premises, or devote the same to any different use, without, in each instance, first obtaining the written consent of lessor; and this lease, or any interest of lessee therein, shall not be transferable

by operation of law without the written consent of lessor, by reason of any bankruptcy, insolvency or receivership proceedings, or attachment, execution or other judicial process or sale by or against lessee;

Third: Not to call on lessor to make any improvements, replacements or repairs on said premises, but lessee accepts said premises in their present condition and agrees, at his own expense, to keep the same in as good condition and repair as they now are or may hereafter be placed, reasonable wear and tear and damage by the elements or other casualty excepted; and lessee hereby waives any and all rights under Section 1942, Civil Code of California, as to repairs, etc;

Fourth: Not to commit, suffer or permit any waste on said premises, or any acts to be done thereon in violation of any law or ordinance, and not to use or permit the use of said premises for any illegal or immoral purpose;

Fifth: To hold lessor and said premises harmless from any loss or damage resulting from the use or misuse of said premises by lessee, in violation of the terms of this lease; and lessee hereby releases lessor from any and all liability for damages which may be sustained by lessee in connection with the use or occupation of said premises by lessee;

Sixth: To pay lessor all costs and expenses, including attorney's fees in a reasonable sum, in any action brought by lessor to recover any rent due and unpaid hereunder, or for the breach of any of

the covenants or agreements contained in this lease, or to recover possession of said premises, whether such action progress to judgment or not; [34]

Seventh: At the expiration of said term, or any sooner determination of this lease, to quit and surrender possession of said premises, and its appurtenances, to lessor in as good condition as reasonable use and wear will permit, damage by the elements or other casualty excepted;

Eighth: If any rent shall be due and unpaid, or if default shall be made in any of the covenants or agreements on the part of lessee contained in this lease, lessor may, at his option, at any time after such default or breach, and without any demand on or notice to lessee or to any other person of any kind whatsoever, re-enter and take possession of said premises and remove all persons therefrom;

Ninth: If lessee holds over after said term with consent of lessor, express or implied, such tenancy shall be from month to month only and not a renewal hereof, and lessee agrees to pay rent at the rate prevailing at the expiration of said term, and all other charges as hereinabove provided, and also to comply with all conditions, covenants and agreements of this lease for the time he holds over;

Tenth: Lessor may from time to time, at his option, exercise all rights or remedies which he may have either at law or in equity and nothing herein contained shall be construed as in any way abridging or waiving such rights and/or remedies; and consent, waiver or compromise by lessor of or

under any of the provisions of this lease, or as to any breach or default hereunder by lessee, shall not constitute or be construed as a waiver of lessor's right to enforce strict interpretation and performance of the conditions and terms hereof by lessee at all other times and as to the same and all other matters herein contained.

Each and all of the conditions, covenants and agreements herein contained shall, in accordance with the context, inure to the benefit of lessor and apply to and bind lessee, their respective heirs, legatees, devisees, administrators, executors, successors, assigns and sublessees, or any person who may come into possession of said premises or any part thereof in any manner whatsoever.

In this lease, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Witness our hands, the day and year first above written.

/s/ PETER C. KAYE,
Lessor.

/s/ ANN MAILO,
Lessee. [35]

State of California,
County of Orange—ss.

On this day of September, 1946, before me, the undersigned a Notary Public in and for said County, personally appeared known to me to be the

person whose name subscribed to the within instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

.....,

Notary Public in and for said County and State.

—————

[36]

DEFENDANT'S EXHIBIT A

OPA Form D-18

Form Approved

(Rev. 10-45)

Budget Bureau No. 08-R501.2

Stamp of Issuing Office: Office of Temporary Controls, Los Angeles Defense Rental Area, Orange County Division, 217 West Second Street, Santa Ana, California.

United States of America

Office of Price Administration

NOTICE OF PROCEEDINGS BY RENT DIRECTOR

Concerning (Address of Accommodations) 469 Poplar Street, Laguna Beach. California.

Docket No. 76473.

To (Name and Address of Landlord): Mrs. Sally Kaye, Oxnard Union High School, Oxnard, California.

This is not an order, but only a notice of proceedings for adjustment of rent. The maximum legal rent remains unchanged unless and until an order has hereafter been entered.

A preliminary investigation by the Rent Direc-

tor indicates that the Maximum Rent for the above-described accommodations should be decreased.

[X] On the grounds stated in Section 5(c)1 of the Rent Regulation. (See other side.) Therefore, the Rent Director proposes to decrease the Maximum Rent from \$150.00 per month to \$75.00 per month, yearly. Landlord pays water.

[X] The Rent Director further proposes that the order decreasing the Maximum Rent shall be effective to reduce the rent from Sept. 23, 1946 for the reason(s) stated in Section(s) 4(e) of the Rent Regulations. (See other side.)

In the event you wish to file a reply to this proposed action, such reply must be filed within 10 days from the date of this notice.

Written evidence supporting your reply must also be filed. Your statements and supporting evidence should be typed or legibly written. The address of the above housing accommodations and the Docket Number appearing on this notice should be placed on each document filed.

If no reply and supporting evidence are filed within the above period, the Rent Director may enter an order decreasing the Maximum Rent without further notice.

April 2, 1947.

/s/ B. C. KOEPKE,
Rent Director.

[37]

HOUSING REGULATION

Section 5 (c) Grounds for decrease of maximum rent. The Administrator at any time, on his own initiative or an application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) Rent higher than rents generally prevailing. The maximum rent for housing accommodations under paragraph (c), (d), (e), (g), or (j) of section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

(2) Substantial deterioration. There has been a substantial deterioration of the housing accommodations other than ordinary wear and tear since the date or order determining its maximum rent.

(3) Decrease in services, furniture, furnishings or equipment. There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since the date or order determining the maximum rent.

(4) Special relationship between landlord and tenant or peculiar circumstances. The rent on the date determining the maximum rent was materially affected by the blood, personal, or other special relationship between the landlord and the tenant, or by peculiar circumstances, and as a result was substantially higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(5) Varying rents. The rents on the date determining the maximum rent was established by a

lease or other rental agreement which provided for a lower rent at other periods during the term of such lease or agreement.

(6) Seasonal rent. The rent on the date determining the maximum rent was substantially higher than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

(7) Substantial decrease in occupancy. There has been a substantial decrease in the number of subtenants or other occupants since an order under paragraph (a) (8) or (c) (8) of this section.

(8) Rent established under section 4 (i). The maximum rent is established under section 4 (i) and is higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date taking into consideration any increased occupancy of such accommodations since that date by subtenants or other persons occupying under a rental agreement with the tenant: Provided, That no decrease shall be ordered below the rent on the maximum rent date.

(9) Modification or elimination of necessity for increase under section 5 (a) (12). There has been a modification or elimination of the necessity for the increase in the maximum rent granted under paragraph (a) (12) of this section, since the order issued under that paragraph.

HOTEL REGULATION

Section 5 (c) Grounds for decrease of maximum rent. The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

(1) Rent higher than rent generally prevailing. The maximum rent for the room is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

(2) Substantial deterioration. There has been a substantial deterioration of the room other than ordinary wear and tear since the date or order determining the maximum rent.

(3) Decrease in services, furniture, furnishings or equipment. There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since the date or order determining the maximum rent.

(4) Seasonal demand. The rent on the date determining the maximum rent for the room was substantially higher than at other times of year by reason of seasonal demand for such room. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

(5) Modifications or elimination of necessity for increase under section 5 (a) (9). There has been a modification or elimination of the necessity for

the increase in the maximum rent granted under paragraph (a) (9) of this section since the order issued under that paragraph.

4 (e) Meals with room. For a room with which meals were provided during the thirty-day period determining the maximum rent without separate charge therefor, the rent apportioned by the landlord from the total charge for the room and meals. The landlord's apportionment shall be fair and reasonable and shall be reported in the registration statement for such room. The Administrator at any time on his own initiative or on application of the tenant may by order decrease the maximum rent established by such apportionment, if he finds that the apportionment was unfair or unreasonable.

EFFECTIVE DATE OF ORDERS

Section 4 (e) Housing Regulation.—First rent after effective date. For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or the effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Adminis-

trator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943), the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) (1) may relieve the landlord of the duty to refund. Where a proper registration statement was filed before March 1, 1945, the landlord shall have the duty to refund only if the order under sections 5 (c) (1) is issued in a proceeding commenced by the Administrator before September 1, 1945. Where a proper registration statement is filed on or after March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator within 3 months after the date of filing of such registration statement. The foregoing provisions and any refund thereun-

der do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7.

Section 4 (j) Housing Regulation.—Changed on or after July 1, 1943, or the effective date of regulation, whichever is the later, from unfurnished to furnished. For housing accommodadtions changed on or after July 1, 1943, or the effective date of regulation, whichever is the later, from unfurnished to fully furnished, the first rent for such accommodations after such change. The Administrator may order a decrease in the maximum rent as provided in section 5 (c) (1).

Within 30 days after the accommodations are first rented fully furnished, the landlord shall register the accommodations as provided in section 7. If the landlord fails to file a proper registration statement within the time specified, the rent received from the time of such first renting shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) (1) may relieve the landlord of the duty to refund. Where a proper registration statement was filed before March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding

commenced by the Administrator before September 1, 1945. Where a proper registration statement is filed on or after March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator within 3 months after the date of filing of such registration statement. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7.

Section 5 (b) Housing and Hotel Regulations.—If the landlord fails to file the petition or report required by this paragraph (b) within the time specified, or decreases the services, furniture, furnishings, or equipment, without an order authorizing such decrease where such order is required, the rent received by the landlord for any rental period commencing on or after such decrease or the effective date of regulation (or December 1, 1942, where the effective date of regulation is prior to that date), whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by any order decreasing the maximum rent on account of such decrease in services, furniture, furnishings or equipment. Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not **at fault in failing to** comply with this paragraph (b), the order may relieve the landlord of the duty to refund. The

foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to comply with any requirement of this paragraph (b). [38]

DEFENDANT'S EXHIBIT B

June 12th, 1947

Office of Housing Expediter
Los Angeles Defense Rental Area
Orange County Division
217 West Second Street
Santa Ana, California

Re: Docket No. 76473

Gentlemen:

This will acknowledge receipt of your order decreasing maximum rent for the premises at 469 Poplar Street, Laguna Beach, California.

A careful consideration of the circumstances of this rental has convinced the undersigned that there are grounds to believe that no refund should be given to the Lessee.

The undersigned, therefore, requests a stay of refund under the procedure set forth in Procedural Regulation No. 3, Sections 1300.214 or 1300.225.

Sincerely,

(Mrs.) SALLY KAYE. [39]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the entire final judgment entered in this action on the 20th day of April, 1948.

Dated this 17th day of May, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ FRANK L. HIRST,
Attorneys for Plaintiff.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed May 17, 1948. [40]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF RECORD
ON APPEAL

Appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, hereby designates the following portions of the record to be included in the Record on Appeal:

1. Complaint filed November 13, 1947.
2. Answer filed February 2, 1948.

3. Plaintiff's Request for Admissions pursuant to Rule 36, filed February 16, 1948.

4. Entire Reporter's Transcript of all testimony and proceedings at the trial.

5. All Exhibits.

6. Defendant's Answer to Plaintiff's Request for Admissions pursuant to Rule 36, filed March 4, 1948.

7. Plaintiff's Objections to defendant's proposed Findings of Fact and Conclusions of Law, lodged April 15, 1948. [42]

8. Findings of Fact and Conclusions of Law by the Court. Filed April 20, 1948.

9. Judgment of the Court entered April 20, 1948, in Civil Order Book No. 50 at Page 248.

10. Notice of Appeal, filed May 17, 1948.

11. Statement of Points upon which appellant intends to rely on appeal.

12. This Designation.

Dated Los Angeles, California, this 15th day of June, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ ABE I. LEVY,

Attorneys for Appellant, Office of the Housing
Expediter.

[Endorsed]: Filed June 15, 1948. [43]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The following are the Points upon which Appellant intends to rely upon the appeal:

1. The Court erred in refusing to accept the Rent Reduction Order of the Area Rent Director, dated May 19, 1947, as valid and binding for all purposes and in all respects in the proceedings before it.

2. The Court erred in considering the validity of said Area Rent Director's Order contrary to Section 204(d) of the Emergency Price Control Act of 1942, as amended.

3. The Court erred in holding that said Rent Reduction Order was invalid on its face.

4. The Court erred in holding that the violations alleged in the Complaint were not established and in refusing to grant Judgment in favor of the plaintiff, as prayed for in the Complaint. [44]

Dated Los Angeles, California, this 15th day of June, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ ABE I. LEVY,
Attorneys for Appellant, Office of the Housing Expediter.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed June 15, 1948. [45]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
THE RECORD ON APPEAL AND
DOCKETING THE APPEAL

On application of the plaintiff and appellant herein, and good cause appearing therefor, it is hereby ordered that the time for filing the record on appeal and docketing the appeal in the above entitled action is extended to and including July 25, 1948.

Dated this 23rd day of June, 1948.

/s/ LEON R. YANKWICH,
Judge, United States District Court.

[Endorsed]: Filed June 23, 1948. [47]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
THE RECORD ON APPEAL AND
DOCKETING THE APPEAL

On application of the plaintiff and appellant herein, and good cause appearing therefor, it is hereby ordered that the time for filing the record on appeal and docketing the appeal in the above entitled action is extended to and including August 16, 1948.

Dated this July 22, 1948.

/s/ PAUL J. McCORMICK,
Judge, United States District Court.

[Endorsed]: Filed July 22, 1948. [48]

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 7763-Y

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

SALLY KAYE,

Appellee.

APPLICATION FOR ORDER EXTENDING
TIME FOR FILING THE RECORD ON AP-
PEAL AND DOCKETING THE APPEAL
AND ORDER THEREON

Appellant hereby makes application to the United States Circuit Court of Appeals, Ninth Circuit, for an order extending time for filing the record on appeal and docketing the appeal in the above entitled action to and including September 27, 1948, said application being based upon the affidavit of Frank L. Hirst, one of the attorneys for the appellant herein, which is attached hereto.

Dated this 4th day of August, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ FRANK L. HIRST,
Attorneys for Appellant.

ORDER

The Court having considered the foregoing application of appellant herein and the affidavit of Frank L. Hirst in support of said application, and good cause appearing therefor, now therefore, it is hereby ordered that the time for filing the record on appeal and docketing the appeal in the above entitled action is extended to and including September 27, 1948.

Dated this 5th day of August, 1948.

FRANCIS A. GARRECHT,

Judge, United States Circuit Court of Appeals,
Ninth Circuit.

[Endorsed]: Filed Aug. 5, 1948, Paul P. O'Brien,
Clerk.

Attest: Aug. 5, 1948, Paul P. O'Brien, Clerk.

[Endorsed]: Filed Aug. 9, 1948. Edmund L. Smith,
Clerk.

In the District Court of the United States for the Southern District of California, Central Division

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 48, inclusive, contain full, true and correct copies of Complaint for Restitution and Injunction; Answer; Plaintiff's Request for Admissions Pursuant to Rule 36; Defendant's Answer to Plaintiff's Request for Admission to Rule 36; Objections to Defendant's Proposed Findings of Fact and Conclusions of Law; Findings of Fact and Conclusions of Law; Judgment; Plaintiff's Exhibits 1, 2 and 3; Defendant's Exhibits A and B; Notice of Appeal; Designation of Record on Appeal; Statement of Points on Appeal; Two Orders Extending Time to File Record and Docket Appeal which, together with reporter's transcript of proceedings on March 18, 1948, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 31st day of August, A. D. 1948.

(Seal)

EDMUND L. SMITH,
Clerk.

In the District Court of the United States for the
Southern District of California, Central Division

Honorable Leon R. Yankwich, Judge Presiding.

No. 7763-Y

TIGHE E. WOODS, Acting Housing Expediter,
Office of the Housing Expediter,

Plaintiff,

vs.

SALLY KAYE,

Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

March 18, 1948

Appearances: For the Plaintiff: Frank L. Hirst,
Esq. For the Defendant: H. Miles Raskoff, Esq.

[1 *]

The Clerk: No. 7763 Civil, Tighe E. Woods vs.
Sally Kaye.

The Court: Counsel ready?

Mr. Hirst: Ready for the plaintiff.

Mr. Raskoff Ready for the defendant.

At the outset the defendant would like to dismiss this action on the ground that the complaint does not state facts sufficient to constitute a cause of action and that the complaint cannot state a

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

cause of action for the period involved. As your Honor will note, there are certain rent statements for the period from December 23rd, 1946 to May 23rd, 1947. No other period is involved here and all of these rent payments as you Honor is aware occurred while the Emergency Price Control Act of 1942 was in effect as amended.

We make this motion on the ground that the Housing Act Section 203(a) thereof, the terminology repeals the saving clause of the 1942 statute. In the 1942 statute there is the express saving clause that the Act expires by its terms and the section provides that after the effective date of this title, no maximum rent shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

If the Court please, the only meaning that can be given [3] to that section is the repealing of the saving clause in the 1942 statute because by the very terms of the 1942 statute as amended in 1945, rent controls were terminated. Otherwise the words have no meaning, and we cannot assume that Congress put in a meaningless section in the statute.

The Court: However, Section 29 of Title I provides that the expiration of any temporary statute shall not repeal any cause of action.

Mr. Raskoff: That is correct, your Honor, but there is also the proviso in Section 29 that unless the repealing act expressly provides for the abatement or termination of the cause of action—

The Court: That is correct. The new statute did not so provide.

Mr. Raskoff: Section 203(a) in stating expressly that no maximum rent shall be established or obtained can mean nothing else.

The Court: That is not the point. That refers to the future ones. The maximum rents established before are saved by the provision, regardless of the provision of the statute. Somebody in 1943, anticipating that somebody was going to raise the question, and as I happened to be in the criminal department during that month when the statute was not in effect, I got on the bench and stated in advance before any lawyers began to tell me that the action was abated [4] that there was a section, and I called attention to that section which says that no action, civil or criminal, shall abate regardless of the expiration of the statute.

Mr. Raskoff: I want to make it clear, your Honor, that in this case the action was not filed until after—

The Court: It does not make a bit of difference. I have passed on this action at least a hundred times in Fresno, San Diego, and Los Angeles, and the point is not well taken. The motion will be denied. Proceed with the evidence.

FRANK J. PALLANCH,

a witness called by and on behalf of the plaintiff,
having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Frank J. Pallanch.

Direct Examination

By Mr. Hirst:

Q. What is your business or occupation?

A. Examiner with the Rent Control Board at Santa Ana.

Q. That is the field office of the Los Angeles Area rent office, is it not? A. That is right.

Q. I call you attention to the premises located at 469 Poplar Street, Laguna Beach, California. Is that within [5] the jurisdiction of your office?

A. It is.

Q. You state you are an examiner?

A. Yes.

Q. In your position do you have access to the official files and records of the office of the Housing Expediter with regard to the property and maximum rents for this property in your jurisdiction?

A. I have.

Q. Do you have the maximum rent records relating to the premises at 469 Poplar Street, Laguna Beach? A. I have.

Q. Mr. Pallanch, will you refer to the records which you have with you and state to the Court the existence or nonexistence of a registration statement having been filed with your office with

(Testimony of Frank J. Pallanch.)

regard to this property. Is there a registration statement in the files?

A. There is a registration statement in the files, yes sir.

Q. Does the statement show on what date that was filed with your office?

A. Yes, sir. It was received February 21st, 1947. It was postmarked February 20, 1947.

Q. What signature is indicated there in the landlord's space? [6]

A. Sally Kaye.

Mr. Hirst: Your Honor, I have already exhibited to counsel a copy of this registration statement.

The Court: What is it?

Mr. Hirst: It shows \$150.00 a month registered, your Honor. He has stipulated we may submit into evidence a copy of the original registration as Plaintiff's Exhibit 1.

Mr. Raskoff So stipulated.

The Court: All right.

The Clerk: Plaintiff's 1 in evidence.

(Plaintiff's Exhibit No. 1 set out in full, page 26, of this printed Record.)

Q. By Mr. Hirst: Mr. Pallanch, following the filing of that registration statement with your office on February 21st 1947, was any action taken by your office with regard to modifying that registration? A. Yes, sir.

Q. Will you indicate the nature of that action?

A. An order was issued.

(Testimony of Frank J. Pallanch.)

Q. Please state the date that order was issued.

A. May 17, 1947.

Q. To whom was the order directed?

A. Directed to Mrs. Sally Kaye.

Mr. Hirst: Your Honor, similarly in regard to the order, Mr. Raskoff has stipulated with me that we might use a copy of the order.

Mr. Raskoff: If your Honor please I stipulated that [7] if admissible I would stipulate to a copy. Are you offering this, counsel?

Mr. Hirst: I am offering it as Plaintiff's Exhibit 2.

Mr. Raskoff: I will object to the admission of this document in evidence upon the ground that the order on its face is an invalid order. There is no allegation in this complaint—it is rather lengthy and if the Court would reserve a ruling until the conclusion of this case?

The Court: I have heard hundreds of these, and unless you have something new, I do not care to hear you. The Supreme Court has recently ruled on the validity of the order, and there are all sorts of cases holding that you can't make an order retroactive, and retroject it into the past.

Mr. Raskoff: My point is not directed to any of those grounds you have mentioned. It is my contention that the Housing Expediter, by the provisions of the statute, has no authority to issue such an order.

The Court: The Supreme Court just the other day sustained all the powers of the Housing Expediter.

(Testimony of Frank J. Pallanch.)

Mr. Raskoff: I have that case, your Honor, sustaining the constitutionality of the new statute, but it is my contention that this order was made under the final statute.

The Court: I am not interested, because I believe we are still at war and all the war powers given to the President are effective. [8]

Mr. Raskoff: My point is simply this, that by the provisions of the 1942 statute that the Office of Price Administrator was given authority to administer the provisions of that statute.

The Court: You had better tell that to the Circuit Court, because I believe the Administrator has all the powers that are available under the War Powers Act; so I will overrule the motion. It may be admitted in evidence.

The Clerk: Plaintiff's Exhibit 2 in evidence.

(Plaintiff's Exhibit No. 2 set out in full, page 27, of this printed Record.)

The Court: Mark you, that does not mean any criticism of you in urging the motion, because the Supreme Court might some day change its mind, but as it stands today there is no point that can be raised in these cases that I have not ruled on a hundred times in the Northern Division, the Central Division and the Southern Division. Therefore I don't care to hear any argument. The objection will be overruled.

Q. By Mr. Hirst: Mr. Pallanch, is that order, so far as your office is concerned, in full force and effect? A. Yes.

Q. It has no further modifications that have been made since the issuance of that order?

(Testimony of Frank J. Pallanch.)

A. It has none.

Mr. Hirst: That is all. [9]

Cross Examination

By Mr. Raskoff:

Q. Mr. Pallanch, do you have before you the file concerning the housing accommodations at 469 Poplar Street, Laguna Beach? A. I do.

Q. Does that file indicate any correspondence between your office and Mrs. Kaye concerning the registration, prior to the registration you testified to? A. Yes, sir.

Q. Would you refer to that correspondence? I believe there is a letter dated February 1, 1947 from Mrs. Kaye to your office.

Mr. Hirst: Your Honor, I know the purpose of counsel's questions. He is intending, I believe, to show probably by his client's testimony that she had filed a prior registration with the office in Santa Ana before the one of February 21st, which has been admitted into evidence. However, the order of the Director has been issued or made in 1947, and is the basis of the maximum rent upon which we rely here, and for that reason I believe that any questioning back of the order for that purpose would be immaterial.

The Court: You know my views. I allow in these cases testimony relating to the background of the order. The order might have been erroneous. You know that we have had [10] cases where the Office of Price Administration accepted the registration from somebody who had no authority to

(Testimony of Frank J. Pallanch.)

register. I remember a case I tried in Fresno, where the man who had been employed as the manager had actually left the property and it had changed hands, and the Office of Price Administration brought him in and had him file a registration. I held that he had no authority to make a registration. Therefore, the question is always as to whether the person who made the registration had authority to make it.

Mr. Hirst: I see your point there, your Honor, and I have been counsel in cases where that has been done. But that is not the point here. Here we have an order that has been subsequently issued, and that order within its own four corners establishes the maximum rent.

The Court: Suppose they went out and got somebody on the street who made a new registration, and who was not authorized by the order, therefore the order will be invalid on its face.

Mr. Hirst: Admittedly, your Honor, it would be invalid in that case.

The Court: I have had cases where a place has changed ownership and they got somebody who was employed by the previous owner, and got him to make the registration, and I held he could not do that because there was no registration.

Mr. Hirst: That may be true as to registrations, but [11] this is an order, a different type of record. It is the official action of the Director himself.

The Court: That does not matter. If he made the order on an invalid registration, and the matter

(Testimony of Frank J. Pallanch.)

was not pending before him for determination, his order is invalid.

Mr. Hirst: I am satisfied that the courts have held—

The Court: I know what the courts have held. I set this case for trial and I am going to hear it on the facts, and I will determine it, not on any technicalities raised by counsel.

Mr. Hirst: For the record, I object to the question.

The Court: I will overrule the objection.

The Witness: There is a letter here dated February 1st. Is that the one you had reference to?

Mr. Raskoff: Yes. This is the original record from the O.P.A. file. I think it is short.

The Court: Will you read it into the record?

The Clerk: (To the witness) Will you please read it in the record?

The Court: I will read it.

“February 1, 1947

Oxnard Union High School

Oxnard, California

Los Angeles Defense Rental Area

Orange County Division

217 West 2nd Street

Santa Ana, California. [12]

“Attention: B. C. Koepke

“Gentlemen:

“The landlord's copy of the registration statement for 469 Poplar Street, Laguna Beach. was sent to your office along with the other three copies

(Testimony of Frank J. Pallanch.)

in October. I thought it was necessary for your office to record the copies. I did, however, keep a copy for my personal file, from which re-registration can be made in duplicate, if you are still unable to find the original.

“In the meantime I enclose the following information:

“The house is now renting for One Hundred and Fifty Dollars (\$150.00) a month; the lease expires June 1, 1947.

“Yours very truly.

/s/ (Mrs. G. I.) SALLY KAYE,
Santa Ana D.R.A.”

Received Feb. 7, 1947.

Q. By Mr. Raskoff: Mr. Pallanch, does your record contain an earlier letter dated on or about October 20, 1947 from Mrs. Kaye, concerning the rental of this property? Excuse me, Mr. Pallanch; I meant October 20, 1946.

A. No, it does not.

Q. Does your file contain any correspondence between your office and Mrs. Kaye concerning the registration of this house, at any time prior to the letter of February 1st which [13] the Court has read into the record?

A. There is a notation here. It has reference to a call from Mrs. Kaye made to our office.

Q. What is that notation?

A. That is February 24, 1947.

Q. This was after. I am asking you about the correspondence prior to the letter of February 1st, 1947.

A. Yes, sir, January 21st.

(Testimony of Frank J. Pallanch.)

Q. To whom is that letter addressed? From whom is it?

A. It is addressed to the Office of Price Administration, Attention Mrs. Thompson.

Q. Who signed the letter?

A. It is signed Mrs. Sally Kaye.

Q. Will you read the letter?

Mr. Raskoff: (Reading)

"I received this communication today addressed to Unit 6, Block 2, Oxnard, California (it was re-addressed Block 2, Unit 6 by the local post office). Future communications should be addressed (as were the registration blanks mailed to me from your office in October) in care of Oxnard Union High School to insure their prompt delivery.

"The 469 Poplar Street house was registered in October. My address was given as Box 75 Laguna Beach, [14] California, which is permanent.

"I am confident that the confusion in addresses will account for the seeming violation. I regret any inconvenience which this matter has caused your office.

"Sincerely yours,

/s/ Mrs. SALLY KAYE,

(Permanent) (Box 75 Laguna Beach, Calif.)

(Present address c/o Oxnard Union High School, Oxnard, California, Oxnard 111.)"

Q. By Mr. Raskoff: Does your file contain any registration of these premises dated earlier than

(Testimony of Frank J. Pallanch.)

that Plaintiff's Exhibit A, which has been received in evidence? A. It does not.

Mr. Raskoff: Nothing further.

Redirect Examination

By Mr. Hirst:

Q. You have examined the files of the office at Santa Ana for an earlier registration?

A. I have.

Q. The file contains notification, doesn't it, to Mrs. Kaye of the letters which she wrote, which were read into the record to the effect that the office had no record of any such registration?

Mr. Raskoff: I have no objection to this line of testimony except that I object to leading the witness. I submit that the letters speak for themselves.

The Court: He is merely directing attention to a special [15] letter.

Q. By Mr. Hirst: Have you the letter written to Mrs. Kaye following the receipt of that last letter by your office? A. Yes, we have.

Q. Will you read the contents of that letter into the record?

"8-R-LA-256-AD-8

"United States of America, Office of
Price Administration

"Re: 469 Poplar, Laguna Beach, Cal.

Ref. No. C-5610 Date 1/28/47

"The records of this office do not indicate that you have filed a registration statement for the

(Testimony of Frank J. Pallanch.)

above accommodations. All registration statements are filed at this office under rental address and we do not have a statement for 469 Poplar in file. If this property was registered by you in October, 1946, kindly send in your copy of the registration statement so we may make a further search of our files. It will be necessary for you to re-register the property if you do not have the landlord's copy. Kindly return this notice with your reply within five days.

B. C. KOEPKE.

“SALLY KAYE,

Oxnard Union High School, Registration Section,
Oxnard, California.” [16]

ANN MAILLO,

a witness called by and on behalf of the plaintiff,
having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Ann Maillo.

Direct Examination

By Mr. Hirst:

Q. Miss Maillo, where do you at present reside? A. 357 Mermaid, Laguna Beach.

Q. Were you ever a tenant at the housing accommodation located at 469 Poplar Street, Laguna Beach? A. Yes.

Q. Do you recall what period you occupied the premises?

(Testimony of Ann Mailo.)

A. From September 23rd, 1946 to June 1 of 1947—June 1st.

Q. Do you recall the circumstances of your renting that particular accommodation? Do you recall the incidents with regard to the rental?

A. Yes.

Q. With whom did you negotiate for the rental of those premises?

A. Peter Kaye, at the real estate office in Laguna.

Mr. Raskoff: In order to save time I am willing to stipulate this witness was a tenant; that she executed a [17] lease with the son of the defendant, and this is a copy of the lease and I stipulate that it may be received in evidence.

The Court: All right.

Mr. Raskoff: I will admit this was ratified by Mrs. Kaye.

Mr. Hirst: You have already admitted it in answer to the question for admissions, that she was the landlord.

Mr. Raskoff: That is right.

The Clerk: Plaintiff's 3 in evidence.

(Plaintiff's Exhibit No. 3 set out in full, page 28, of this printed Record.)

Q. By Mr. Hirst: Did you pay the sum of \$150.00 each and every month, Miss Mailo?

A. Yes, I did.

Q. With reference to the last portion of your occupancy there, a short period following May

(Testimony of Ann Mailo.)

23rd, 1947, did you make payment of rental for the following time you were there?

A. No, I did not.

Q. How much longer were you there after May 23rd?

A. It was, I think, the 1st of June. I am not sure. It might have been a little after, the 4th or 5th. I am not sure how long it was.

Q. Had you received a copy of the order of the Rent Director prior to that time?

A. Yes, I did.

Q. Did you have any discussion or communication with Mrs. Kaye with regard to the rental for that period? [18]

A. No, not that I remember.

Q. Did she demand payment?

A. Yes, she sent me a bill for it, or left the bill at the door. I think it was Peter left it.

Q. What was your reply?

A. I talked to her on the phone a short time after that and requested she take it off of the amount that she owed me.

Q. How long a period was that, from May 23rd to what time you did not pay the rent for the last period?

A. I don't remember. It was probably a matter of two weeks.

Q. Who occupied the premises with you?

A. Miss Haynes and Miss Thompson for a short while.

Mr. Hirst: I think that is all, your Honor.

(Testimony of Ann Mailo.)

Cross Examination

By Mr. Raskoff:

Q. Miss Mailo, under the lease and arrangement you had with Mrs. Kaye, you were obligated to pay for the telephone bill, were you not?

A. That's right. She has forwarded the bill to me every month.

Q. You did not pay all the telephone bill?

A. The last one was not paid because it was not sent [19] to me.

Q. You did not pay the last telephone bill?

A. No.

Q. Under your written lease with Mrs. Kaye you were obligated to maintain the yard surrounding this house, and to maintain the furnishings and furniture in the house in reasonably good condition, is that correct? A. That's right.

Q. Did you do anything to take care of the yard?

A. To the best of my ability I tried to keep it watered and the lawn mowed.

Q. Did you ever receive notice from the city concerning the destruction of weeds?

A. There was a notice concerning the back lot from the house that the weeds would have to be destroyed.

Q. Did you destroy the weeds?

A. No, I did not.

Q. How many dogs did you have in the house?

A. Two.

(Testimony of Ann Mailo.)

Mr. Hirst: I will object, your Honor, to this line of questioning.

The Court: I will sustain the objection. You cannot void a rent order by showing that they did things which they were not supposed to do, even by the keeping of dogs or human beings. It is not material whether she had babies or dogs [20] which are not permitted, because if you rent the property you do not put in those exceptions. Then your remedy was to go to the office of the Price Administration and make a change. You cannot by fiat of your own change the order by saying she was having two persons; that you rented to two persons instead of four, or that she had dogs or babies. That is propaganda being used by the real estate boards for avoiding the law, but that is not a legal reason for disobeying the law, because you have a proper remedy, and that is to go before them and ask for a change for multiple occupants, whether it be babies or anything else.

Mr. Raskoff: I understand that, your Honor. I don't want the Court to understand that it would go to any interest in the matter: it is merely laying the foundation for showing an offset for damages to the furniture.

The Court: You haven't filed a counter claim. It is not permissible in these cases, as I have held dozens of times, to file a counter claim for damages, because the litigant here is the United States of America and you can't have a counter claim against the United States of America.

(Testimony of Ann Mailo.)

Mr. Raskoff: I respect the Court's ruling on that, but in reading the complaint, however, your Honor, I notice that it asks for an order of the Court directing the defendant to make a refund to the tenant.

The Court: The Court can do that, but the tenants are [21] not the litigants in the case. I have held, and held consistently, that I cannot order a refund to the persons, but merely direct, as if and when the moneys are collected, that the moneys be turned over to the persons, but these persons are not the litigants in the case.

Mr. Raskoff: In this case the prayer is a little different.

The Court: It doesn't make any difference whether the prayer is different or not. In our courts the prayer does not matter.

Mr. Raskoff: This being an equitable action, and since an equitable defense—

The Court: No, it does not make a bit of difference. If she has any claim against the tenant she can go to the Municipal Court and assert the same. They are not assertible in this court, and I have sustained motions to dismiss against every attempt to do that in these cases. It is so settled I don't want to hear any more arguments.

Q. By Mr. Raskoff: Miss Mailo, the first month's rent at the time of the lease was not paid to Mrs. Kaye? Is that correct? A. No.

Q. To whom did you pay the first month's rent?

A. To Peter at the real estate office.

(Testimony of Ann Mailo.)

Q. Did you pay it to Peter or to the real estate office? [22]

A. I think it was paid to Peter. I am almost sure his signature is on the receipt. I may be wrong.

Q. Perhaps your recollection will be refreshed. Have you kept the receipt?

A. Miss Haynes has it.

Q. Miss Mailo, I show you a document bearing the letter head of Roy W. Peacock & Son in Laguna Beach, dated September 2nd, 1946, and ask you if that is the receipt that you received for \$150.00, paid upon the execution of this lease?

A. Yes.

Q. Now that you have seen that receipt, is your answer to the previous question the same? Did you pay this money to Peter Kaye or to the rest estate agent?

A. I still say it was paid to Peter. He received the money.

Q. Did you make payment to Peter Kaye or pay the real estate agent?

A. I really don't remember; the transaction took place in the real estate office.

Q. You received the receipt from the real estate agent?

A. Yes, because of the fact that the house was in their hands for the rent.

Q. Thereafter, Miss Mailo, who did you make the rent [23] payments to?

A. I sent \$100 to Mrs. Kaye and \$50 to Peter;

(Testimony of Ann Mailo.)

different checks or money orders.

Mr. Raskoff: No further questions.

Mr. Hirst: That will be all. The plaintiff rests, your Honor.

The Court: Put on your proof.

SALLY KAYE,

the defendant, called as a witness in her own behalf, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Sally Kaye.

Direct Examination

By Mr. Raskoff:

Q. What is your occupation, Mrs. Kaye?

A. I teach at the Oxnard Union High School, English and American problems.

Q. Are you the owner of the premises involved in this proceedings, 469 Poplar Street, Laguna Beach?

A. Yes, I am.

Q. Have you ever rented the premises prior to the time you rented to Miss Mailo?

A. No, she was the first tenant. [24]

Q. Who had lived in the house prior to that time?

A. My mother and father lived there prior to their death. My son, my sister, and my sister's child during that period when she was in service in the Army.

(Testimony of Sally Kaye.)

Q. When did you first learn of the renting of the house to Miss Mailo?

A. It was the 24th or 25th of September. I telephoned my house at Laguna Beach to see if my son had left there for college or what had happened down there. Somebody answered the phone. I asked for Peter Kaye and she said he was not there. I said, "This is Mrs. Kaye." The voice said, "Mrs. Kaye does not live here any more. I am the new tenant." I was surprised because I did not know there was one. I talked to her and she said that Peter had rented the house through Mr. Peacock. She was very pleasant. I said I would check into it; was there anything that she needed. She said no, she had everything she needed. The house was very clean. Peter had done everything.

Q. That is not necessary to go into.

A. I did not know anything about the renting of the house until I phoned.

Q. When was it, the best that you can recall, that you had the conversation?

A. The 24th or 25th of September, 1946.

Q. After the conversation did you have any occasion to [25] communicate with the Office of Price Administration?

A. Yes.

Q. When was that, Mrs. Kaye?

A. Following a conversation the next day with my son I said would Peacock take care of the O.P.A.; did he ask them about it? Yes, he checked with them but they can't register the house. We

(Testimony of Sally Kaye.)

will have to do it. I said, "Will you take care of it?"

He said no, but the Peacock office said they would do it. I sat down and wrote a note.

Q. To whom did you direct it?

A. I just initialed it.

Q. Do you have a copy of the note with you?

A. No, I don't have a copy of it at all.

Q. Do you remember what you said?

A. Yes, I think I remember exactly.

Q. State the contents the best you can recall, what you said in that letter.

A. I said I wished to report the rental of my house at 469 Poplar Street, Laguna Beach, as of September 3rd to May 23rd.

Q. Did you in that note state the amount of money? A. I don't remember.

Q. Did you receive a reply from the O.P.A. to that letter? A. No. [26]

Q. When was the next occasion you had any correspondence with the O.P.A.?

A. It was the 15th of October.

Q. What was the nature of that correspondence?

A. I then wrote a letter and addressed this letter to the O.P.A., Santa Ana, California, and said, that I had been in communication with the Ventura office inasmuch as I could not get the Santa Ana office, and they had advised me that there were some registration blanks which should

(Testimony of Sally Kaye.)

be filled out and would they kindly send them to me.

Q. Did you receive a reply to that letter?

A. I did.

Q. What was stated?

A. Two days later they sent me some registrations which I immediately filled out, so I can't see why there wasn't some communication—

Mr. Raskoff: Just a minute. Am I correct in restating your testimony that on or about the 15th of September you wrote the O.P.A. requesting a registration? A. The Witness: No, October.

Q. By Mr. Raskoff: When did you receive their reply enclosing the blanks?

A. I don't remember the date.

Q. Did you fill out the registration forms?

A. Yes, that same day, Saturday. [27]

Q. Did you return them to the Office of the Price Administration?

A. I did, and I sent all the blanks back, because I thought my copy would have to be okayed by them in order to be valid, but when I sent them back, for my own file I copied everything.

Q. Did you hear anything further from the O.P.A. in this matter?

A. Yes; not for a long time.

Q. When was the next time you heard anything, as best you can recall?

A. I telephoned them and I asked their advice about having Miss Maile move from the property.

Q. When was that?

(Testimony of Sally Kaye.)

A. That was early in January.

Q. Did you have any conversation or communication with the O.P.A. with respect to the registration?

A. Yes.

Q. If you did, tell me when it was.

A. I think it was in February.

Q. What was the nature of that communication?

A. It was a regular form. They said I had not registered the house; that they had no registration.

Q. Did you reply to that notice?

A. Yes, I did. [28]

Q. When did you reply?

A. In just a day or so. It would be about the 20th of February.

Q. What was the nature of that reply?

Mr. Hirst: I object. It is not the best evidence.

Q. By Mr. Raskoff: Do you have a copy of your reply, Mrs. Kaye?

A. With me?

Q. Yes.

A. No, I don't.

Q. Do you, counsel?

Mr. Hirst: I think we have it in the file.

Q. By Mr. Raskoff: Mrs. Kaye, I show you a letter which is typewritten, with the date February 1, 1947. It is from the Los Angeles Defense Rental Area, Orange Division, and ask you if that is your signature?

A. Yes.

Q. Will you read that letter and tell the Court whether or not that is the letter you sent the O.P.A. in reply to their notice?

(Testimony of Sally Kaye.)

A. This is the letter.

Mr. Raskoff: If your Honor please, this is the same letter which was read into the record awhile ago. You heard Mr. Pallanch testify concerning what transpired between you and the O.P.A. subsequent to the receipt of that letter, did [29] you not, Mrs. Kaye? A. I listened to it.

Q. And was that what transpired after the receipt of this letter?

A. I don't understand the question. Was what transpired?

Q. The correspondence between you and the O.P.A. was substantially that to which Mr. Pallanch testified?

A. Yes, except he left some out.

The Court: Tell us what he left out.

A. Maybe I am just confused, your Honor, but he said he did not have any correspondence from me prior to a certain date. It seems strange that they would send me blanks out of the blue to fill out that way.

The Court: You can't answer the question?

The Witness: He said I had no communication with the office. They sent what I requested and it seems to me that I must have made a request some place.

Q. By Mr. Raskoff: Mrs. Kaye, at the termination of this correspondence concerning which you have testified with Mr. Pallanch, did you re-register the house?

A. I re-registered the house.

(Testimony of Sally Kaye.)

Q. Where did you get the information that you included in the registration statement?

A. I copied it word for word out of the same places [30] that I had made in the first in my personal files of the original registration I mailed to their office, I believe the 20th of October.

Q. After you filed the second registration, Mrs. Kaye, did you have any further communication with the O.P.A. with respect to the maximum rent?

A. Yes.

Q. What was the nature of the next communication you received? When was it received, Mrs. Kaye, if you recall?

A. I recall that the next written communication I had with that office was in February, at which time I received notice from them saying there had been an investigation of the premises and there was an overcharge in the rent; that I was in violation, and would I state my case or something like that.

Q. I show you an O.P.A. Form D-18, dated April 2nd, 1947, and ask you if that is the communication that you received from the Office of Price Administration? A. It looks like it.

Q. Is it the one that you received, Mrs. Kaye?

A. Yes.

Q. Do you recall when you received this notice?

A. Exactly, do you mean?

Q. As best you can recall.

A. April 1st or the end of March. [31]

Q. Between the time that you filed the regis-

(Testimony of Sally Kaye.)

tration and the time that you received this notice, did you have any other correspondence with the O.P.A. concerning this?

A. No, I did not hear anything from them.

Mr. Raskoff: I offer this notice in evidence as defendant's exhibit.

Mr. Hirst: No objection.

The Court: It may be received.

The Clerk: Defendant's A in evidence.

(Defendant's Exhibit A set out in full, page 36, of this printed Record.)

Q. By Mr. Raskoff: Did you make a reply to that notice, Mrs. Kaye?

A. I don't remember; if they asked me to I did.

Mr. Raskoff: Counsel, do you have a copy in your file of Mrs. Kaye's reply?

The Court: I think we had better take a short recess, so that you may look at the file and see what they may have that you want.

(Short recess.)

Q. By Mr. Raskoff: Mrs. Kaye, after receipt of Defendant's Exhibit A did you send a reply to the Office of Price Administration?

A. Yes, I did.

Q. I show you a letter dated April 9, 1947, and ask you if that is in your handwriting?

A. It is, yes. [32]

Q. Is that the reply that you sent to the office?

A. Yes.

(Testimony of Sally Kaye.)

Mr. Raskoff: Your Honor, counsel for the Government states that he is reluctant to let this out of his file. May it be read?

Mr. Hirst: I have no objection to having it read into the record.

Q. By Mr. Raskoff: Would you read the letter?

The Court: No, you read it into the record.

Mr. Raskoff: (Reading) "April 9, 1947." And a stamp indicating it was received April 11, 1947.

"Office of Temporary Controls
Santa Ana, California

Attention: Miss Thompson

(Docket 76473)

Dear Miss Thompson,

As you undoubtedly recall, I spoke with you last week when I was in Laguna for spring vacation, relative to petitioning your office for summer rental rates in the property at 469 Poplar Street. You told me at that time that your office had mailed me a notice to Oxnard of preliminary proceedings for suggested reduction in rent. I have received the communication and it is quite a blow.

I should like to protest the suggested reduction as unreasonable and unfair. The lease was drawn by a [33] reputable and established real estate firm, who did not question the amount of rent asked. In December, despite the lease, when the tenant implied to my son that she might not be able to afford

(Testimony of Sally Kaye.)

to keep the house, I telephoned her and gave her the privilege of moving. She did not avail herself of the opportunity; I said and did nothing about the very late payment of the rent, as it was Christmas time.

“It cannot help but occur to me that the tenant rented the house with the idea of getting it and then demanding a lower rent. Two other girls share the house with her, the legality of which I have questioned. No permission was asked of me.

“If the suggested rental reduction was granted it would leave me, after making the payment on the house, paying the water and repairs, about fifteen dollars. The point of renting the house is to enable my son, (of whom I am the sole support) to go to college.

“I do not know when or by whom the inspection was made. I should like to say that just looking at the place, surrounded by weeds, bottles, etc. makes me ill. The tenant and the other occupants have allowed the house and grounds to deteriorate unbelievably. The only requests the tenant has made from me—I have taken care of a plumbing repair; and a new carpet-sweeper—and [33-A] permission to remove a bed.

“In addition to being one of those ‘poor teachers’, and general reasons, I base my protest on rental reduction chiefly on relative rental in the Laguna community, etc.

“At present in order to have some income from my Laguna house, I am living in a housing pro-

(Testimony of Sally Kaye.)

ject. It is a government project, and for two rooms and a bathroom, which has no wash bowl, I pay \$31.75 a month. No rugs, linen, dishes, blankets, etc. are furnished. There is a kerosene cooking stove and an oil-burning water heater and stove in the living room. The structure is a cracker box of plywood, which teeters on four cement foundation blocks. I cannot reconcile a government housing rental such as I pay with the proposed rental of 469 Poplar St. Laguna, with unit heat, two bathrooms, fire-place, electric refrigeration, some five thousand dollars worth of furniture, one-residence zoned neighborhood, view, garage, etc. and three times as many rooms.

“I shall protest any reduction in rental—(in court, if necessary!) because I think it is unfair

“Any consideration you can give to my point of view, I shall deeply appreciate.

Very Sincerely,

(Mrs. S. P.) SALLY KAYE.

“P. S. How do I proceed re-summer rates—or rental of rooms?” [33-B]

Mr. Hirst: I have no objection to reading it in, may it please your Honor, and submitting it in evidence. The only thing we object to is the part which is obviously immaterial as to what the order states as to the rent so far as it relates to a protest.

The Court: Objection overruled. It may be received.

(Testimony of Sally Kaye.)

Q. By Mr. Raskoff: I show you, Mrs. Kaye, Plaintiff's Exhibit No. 2 which is an order decreasing the maximum rent and requiring a refund to the tenant, and ask you if that is the next communication you received from the O.P.A. after writing the letter which I just read into the record? A. Yes.

Q. Plaintiff's Exhibit No. 2 shows the date of May 19, 1947. Did you receive that on or about that time? A. Yes, I did.

Q. And it refers in this notice, Mrs. Kaye, to a procedure for staying the refund. Did you communicate with the O.P.A. concerning a stay for a refund?

A. I don't understand the word "stay."

Q. Did you have occasion after receiving that notice from the O.P.A. to ask the O.P.A. to postpone the making of a refund to the tenant?

A. I don't remember. I think I did.

Q. Mrs. Kaye, I show you a letter dated June 12th. [34] A. I wrote that.

Q. Was that written after the receipt of the notice of Plaintiff's Exhibit No. 1?

A. Yes, it was.

Mr. Raskoff: Your Honor, counsel has stipulated this is a carbon copy of the original which is in his files. I offer it in evidence.

The Court: Very well.

The Clerk: Defendant's Exhibit B in evidence.

(Defendant's Exhibit B set out in full, page 42, of this printed Record.)

(Testimony of Sally Kaye.)

Q. By Mr. Raskoff: After sending that letter, Exhibit B, did you receive a reply from the O.P. A., Mrs. Kaye? A. Yes.

Q. I show you a carbon copy of a document which is addressed to you and ask you if that is the reply you received? A. Yes, it is.

Mr. Raskoff: Again, your Honor, this is part of the Government file. May I read it into the record?

The Court: Yes.

(Mr. Raskoff reading.)

"In accordance with your request of June 12th, 1947 we are enclosing herewith Forms D-9 and D-9-A. As instructed in Form D-9-A a certified check must be submitted made out in the amount of the refund due each tenant, made payable to the United States Treasury." [35]

Q. Did you reply to that notification, Mrs. Kaye? A. I don't think I did.

Q. Did you fill out the forms and send the check to the O.P.A.?

A. I could not, no. I did not have the money or any part of it.

Q. Did you receive any rent from Mrs. Mailo, for the period from May 23rd, 1947 to June 7, 1947?

A. No, I did not. She told me the O.P.A. wrote her that I was to deduct that from the amount I owed her in the refund, along with the amount of twenty-six and some odd dollars for the telephone bill. Over the phone that was.

Mr. Raskoff: If your Honor please, the Court

(Testimony of Sally Kaye.)

has already made its view on the next line of inquiry. I would merely like to make an offer of proof.

The Court: I don't like offers of proof. Ask the question.

Q. By Mr. Raskoff: Mrs. Kaye, upon the termination of Miss Mailo's tenancy, after she moved out, how much money did you have to spend to restore the premises to the condition in which they were when they were rented?

Mr. Hirst: To which we object for the reasons already stated.

The Court: I will overrule the objection. It is not permissible, but I will put it into the record. You may [36] answer.

A. I would like to preface my statement—

The Court: No.

A. The repairs are still not made in full. I have not been able to make them in full.

Q. By Mr. Raskoff: How much money did you spend making repairs?

A. I have actually paid out about \$350.00.

Q. Can you itemize that? A. Yes, I can.

The Court: No, unless counsel wants it itemized. I don't think it should be itemized. It is not material. I am letting you have it for the record. May I say off the record—

(Off the record.)

Mr. Raskoff: No further questions. You may cross examine.

(Testimony of Sally Kaye.)

Cross Examination

By Mr. Hirst:

Q. You state that you first wrote the O.P.A. in Santa Ana asking for forms which you received back two or three days later, and that you filled these forms out. You testified also that you mailed the entire set to the office and that you did not retain the landlord's copy but that you made a copy yourself. Is that it? [37]

A. That's the original registration.

Q. Yes. A. That's right.

Q. Did you ever receive back a landlord's copy of that registration?

A. The original registration?

Q. Yes. A. No, I didn't.

Q. You knew, didn't you, that in the ordinary course of processing the registration, you would have received that back, did you not?

A. No, I did not.

Q. Did you ever make any further inquiry from the 15th of October or shortly thereafter, when you filed the registration, whether it had been accepted by the office or not?

A. No, I took it for granted it was all right because I did not hear from them.

Q. After your letter addressed to the Office of Price Administration, so far as the registration forms which you sent them were concerned, how did you address the envelope, do you recall?

A. Yes, O. P. A., Santa Ana, Cal. After that

(Testimony of Sally Kaye.)

I addressed all communications just as they were at the left of the envelope with the stamp, and I think it said Area Office, Price Control, Rental Administration, with the address. [38]

Q. You testified that shortly after the receipt of this order on or about May 7th, 1947 you wrote the office a letter, is that true? A. Yes.

Q. You received back a reply from the office, I believe enclosing forms and calling your attention to the necessity of submitting refund checks?

A. That is right.

Q. You made no reply to that, and stated that you were unable to make the refund?

A. I did not send the money. I did not have it. I did not fill it out.

Q. Subsequent to that time you have received, have you not, communications from the office with reference to the payment of the refund?

A. No.

Q. No inquiry and no demands have been made on you to make the refund?

A. To my knowledge that was the last communication I had from them. I am practically positive. It was just as school was out and I was in Laguna the last time I heard from them. That's why I remember.

Q. Mrs. Kaye, on or about August 12th, where did you receive your mail on or about that date, the box number?

A. Box 75, Laguna Beach, California. Then I had the [39] mail forwarded from October 26th.

(Testimony of Sally Kaye.)

The Oxnard Union High School sent my mail which went to 469 Poplar, but all O.P.A. communications, I asked them to send to the High School.

Q. I show a registered letter No. 20346, stamped August 12, 1947, which has never been opened.

A. I have never seen it.

Q. I call your attention to the initials and to the address Unit 6, Block 2, Oxnard. Was that your permanent address at that time?

A. Wait a minute, because I don't think that was the address. I moved out of the address at that time.

The Court: The question is whether you saw that letter.

The Witness: I have never seen it.

Q. By Mr. Hirst: You notice there is a pencil notation made of Box 75, Laguna Beach. That was your box at that time?

A. What is the date?

Q. August 12, 1947.

A. Yes. It was not in Laguna.

Q. The notation is made: Notified 8-8-47 to 8-14-47. Isn't it a fact that you were notified by the Post Office that there was a registered letter waiting to be picked up and you did not call for it?

A. No, I got no mail at the Post Office. As I remember I was not in Laguna then. I was gone about two weeks until [40] about the middle of August, and the mail placed in my box, other people got the mail. I couldn't say that there never was such a registration.

(Testimony of Sally Kaye.)

Q. Neither you or anyone on your behalf has ever claimed that letter?

A. Not to my knowledge, no.

The Court: All right. Step down.

PETER KAYE,

a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Peter Kaye.

Direct Examination

By Mr. Raskoff:

Q. What is your relationship to the defendant, Mrs. Sally Kaye? A. I am her son.

Q. Did you arrange with Miss Mailo, as real estate agent for the rental of these premises?

A. Yes, I did.

Q. How much money was paid you for the first month's rent, Mr. Kaye?

A. I got, as I remember it, \$90.00. The total check [41] was \$150.00, and the real estate office took 5 per cent of the total rent for the commission and I got what was left.

Q. That was your real estate agent?

A. Yes.

Q. Mr. Kaye, do you know how much money was spent in restoring the property to the condition it was at the time it was first rented?

A. Approximately, yes.

Q. How much was it?

(Testimony of Peter Kaye.)

Mr. Hirst: I object to that for the same reasons.

The Court: Overruled.

Q. By Mr. Raskoff: How much money was spent in restoring the property to its condition?

A. I would say not less than \$300.

Mr. Raskoff: No further questions.

The Court: Step down.

Mr. Raskoff: That is the defendant's case.

The Court: Any rebuttal?

Mr. Hirst: There could be plenty of rebuttal on the question of damage to the property. I took the position that it was entirely immaterial in this proceeding, so I am not going to ask any questions.

The Court: All right.

Mr. Hirst: This case is basically a very simple set of facts. It is the common type of case that the Office of [42] Housing Expediter brings into court. We have here a situation where a registration is filed by a landlord designating a certain rental which he is charging. The Office of Housing Expediter, through the Director, is empowered to process that registration, either to approve it or, if he determines that the rent that is being charged is excessive, he can take the necessary steps to reduce it.

The Court: Except in cases where the property was not rented during the preceding year, in which event it does not control.

Mr. Hirst: You are referring now to the provisions of the Housing Act of 1947.

The Court: Yes.

Mr. Hirst: There are certain exceptions, but

they are not applicable to this case, because all the base rent took place back in 1946, and the Housing Rental Act has no application to these facts.

Now the evidence of the Office of Housing Expediter shows a registration filed February 21st, 1947. There is no record of any prior registration, regardless of the defendant's testimony, and the record further shows that the Director did not agree with the landlord in her statement of the rent, and he took the necessary steps to reduce it, and in May, 1947, there was issued an order which has been introduced in evidence as Plaintiff's Exhibit No. 2, reducing it [43] from \$150.00 per month to \$75.00 per month, and indicated that the order was retroactive in effect back to the beginning date when the property was first rented, namely, September 23rd, 1946.

The evidence further shows that the defendant never made a refund pursuant to the order of the Director requiring a refund to be made within 30 days after the issuance of the order.

That no proper proceedings for the stay of the effect of the order were ever initiated, so the order was in full force and effect and binding on the defendant from the time it was issued. The defendant is therefore in violation of the law for failure to refund, and that is the basis of the plaintiff's action.

The Court: I am interested in just one thing. Doesn't the statute say that if the property never had been rented during the year preceding the enactment of the new law that it is not subject to control?

Mr. Hirst: The order was made before the Housing and Rent Act of 1947 came into existence.

The Court: But you are bringing the lawsuit now to collect it.

Mr. Hirst: But it is brought on the law in effect at the time.

The Court: You are bringing the lawsuit now. Therefore [44] when the 1947 Act said that any housing accommodation which was not used for one year prior to the enactment of the Act was not subject to the control, they have a right to be retroactive just as much as I have.

Mr. Hirst: I disagree with your Honor. The law becomes effective as of the date of the enactment.

The Court: The Congress has said that any housing accommodation which was not rented for one year prior to this was not subject to control. The mere fact that you made an order does not repeal the act of Congress. Congress has made it retroactive, just as they do in taxes. They can make a tax retroactive as of three or four months or six months or a year before.

Mr. Hirst: But I think we are on a point that cannot be made an issue. This property was rented within the last year prior to the Housing Rent Act. It shows that in September, 1946 the property was rented to Miss Ann Mailo. There is no applicable provision that would apply here.

The Court: You did not bring this suit until the new Act went into effect in November, 1947.

Mr. Hirst: This property does not come under any provision of the Housing and Rent Act of 1947.

The Court: What is the Housing Act? Let us see what it says. You read it.

Mr. Hirst: Here it is. I will first indicate—

The Court: Give the date of the Act.

Mr. Hirst: I was reading now from the regulation.

The Court: Give me the date of the Act first.

Mr. Hirst: The date of the Act, your Honor, is not indicated here, but I state to the Court that it became effective July 1st, 1947.

I can't, just by glancing through this particular copy, see the provision. This Act, as we know, made certain exemptions, and held within its control what they call the housing accommodation. This is a pertinent subdivision. Section 202, Subdivision (c)-(3). "any housing accommodation"—these are the exemptions—"any housing accommodations (A) the construction of which was completed—

The Court: No, read it through, please.

Mr. Hirst: (B) "which at no time"—this is the exemption "which at no time during the period February 1, 1945 to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant, as housing accommodation."

That is the situation, which was not rented from February, 1945 to January, 1947. The case before the Court involves the rent during that very period.

Now, your Honor, the action of the Director—the order was issued as testified to. It has been introduced in evidence. It was issued by the Area Rent Director. I can cite [46] a number of cases

in court where it held that the exclusive jurisdictional clause of the Emergency Price Control Act, which was the Act in effect at the time of this order, Section 204 (d) confers upon the Emergency Court of Appeal exclusive jurisdiction to pass upon the validity or the invalidity of the order, on the regulation upon the terms of that Act. That provision has been upheld by the decisions of the Supreme Court of the United States, the basic decisions of which your Honor is familiar, *Yakus v. U. S.*, 321 U. S. 414; *Bowles v. Willingham*, 320 U. S. 503.

And as a matter of fact, following the jurisdiction that was conferred upon the Emergency Court of Appeal, they have taken jurisdiction under that provision to determine protest proceedings involving individual orders directing reduction of rent and have upheld them and rejected them, depending upon the merits of the case. 146 Fed. 2d, 1947.

The Court: I know that.

Mr. Hirst: We cannot short circuit that exclusive jurisdictional provision and come into this court and go behind the order itself and seek to declare it invalid because there is no jurisdiction for that purpose here. We must take the order, after we have established the due execution of the order, and give full effect to that order.

Mr. Raskoff: If your Honor please, I have read the Supreme Court decisions which counsel cites, and as a matter [47] of fact they expressly reserve opinion on the question of whether or not an order is void on its face, and can be so declared by the

trial court. In the first case (*Yakus v. United States*, 321 U. S. 414), when this matter was before the Supreme Court, Mr. Justice Stone writing the majority opinion in that case held that the District Court had no right to go behind the order, and goes on to say:

“There is no contention that the present regulation is void on its face, petitioners have taken no step to challenge its validity by the procedure which was open to them and it does not appear that they have been deprived of the opportunity to do so. Even though the statute should be deemed to require it, any ruling at the criminal trial which would preclude the accused from showing that he had no opportunity—”

The Court: We are not talking about a criminal case.

Mr. Raskoff: I was merely pointing out that it did reserve the question.

In the case of *Bowles v. Willingham*, 321 U. S. 503, the Court held in that case that the Court cannot go behind the order, and Mr. Justice Rutledge writing the concurring opinion pointed out at that time that there were no constitutional denial of rights in that case. He says:

“In my opinion Congress can do this, subject, however to the following limitations or reservations, [48] which I think should be stated explicitly:

“(1) The Order or regulation must not be invalid on its face;

“(2) the previous opportunity must be adequate for the purpose prescribed in the constitutional

sense;”— That language is taken from the opinion of Mr. Justice Stone in the other case. This is a civil case.

“and (3), what is a corollary of the second limitation or implicit in it, the circumstances and nature of the substantive problem dealt with by the legislation must be such that they justify both the creation of the special remedy and the requirement that it be followed to the exclusion of others normally available.”

It is our contention, your Honor, that the Supreme Court has not indicated that the trial court would be prohibited from going behind the order, and the evidence is undisputed, that this housing accommodation was registered by the very regulation that authorized this order. We contend, on the undisputed evidence in this case, that the defendant filed a registration within the 30 days and that this order on its face appears to have been issued after the 30 days. On that basis by the very regulation under which this order purports to get its authority, the order is invalid.

And the second ground on which we contend the order is [49] invalid is on the basis that this Court is authorized to inquire, under the Supreme Court decision and under that the defendant in this case did everything she could do to appeal this order. She did not have any money and there was no way in which any avenue was open to test the validity of the order. We submit that on these facts this procedure would be a denial of the constitutional rights on the part of the defendant because no avenue was open to her to test the validity of this order.

The Court: The courts have repeatedly held that inability to furnish the cost of appeal is not a denial. They are out of luck.

Mr. Raskoff: The Supreme Court states in this opinion that the opportunity to be heard must be adequate.

The Court: It was adequate, because she knew about it. The mere fact that she did not have the money to appeal does not mean anything. She can still appeal in *forma pauperis*, which is granted in both civil and criminal cases.

Mr. Raskoff: The last point I would like to make, with the Court's permission, is the point I started to develop earlier, and that is that the order on its face is invalid because it is an order of the Office of Temporary Control, and I contend that the statute itself is clear on that point.

The Court: There is no use of wasting time on that. [50] I have ruled the other way fifty times.

Mr. Raskoff: In rent cases?

The Court: Yes. The Supreme Court has so ruled and the Circuit Court has so ruled.

Mr. Raskoff: I will respect your Honor's wishes.

The Court: Anything relating to the constitutionality of the Act is out, because I have ruled so often it is a waste of time to argue.

Mr. Raskoff: In conclusion I want to say that the record in this case is clear that there was no attempt, and the Government does not contend that there was any attempt, to conceal the amount of rent. The rent was disclosed *ab initio*, and the only point is whether the defendant can be obli-

gated to pay the amount because the order was not issued within the 30 days of the rent order and it is invalid on its face.

Mr. Hirst: If you look at the order within its four corners it is not invalid on its face.

The Court: The regulation—

Mr. Hirst: The order is what I am referring to.

The Court: But you have got to go by the regulation. It is undisputed that this property was never rented before, and the only registration was the registration which you have in evidence and that is dated February 21, 1947.

Mr. Hirst: Yes, your Honor, but the basis of liability [51] is predicated upon the order subsequently issued.

The Court: But if it appears upon its face that the order was issued after the time for modifying the order, to make it retroactive, it was invalid.

Mr. Hirst: But you have to go behind that.

The Court: If you kick out No. 1 you have no regulation at all.

Mr. Hirst: You don't need any regulation.

The Court: No, that is not my view of the law.

Mr. Hirst: Besides that, your Honor, the evidence, as counsel says, is undisputed, but it is very definitely disputed. There was a prior registration.

The Court: There never was any prior occupancy by anybody.

Mr. Hirst: I am talking about the registration by the landlord.

The Court: Who?

Mr. Hirst: The defendant in the case, Mrs. Kaye.

The Court: There is no showing that the property was occupied by anybody else before that time.

Mr. Hirst: I am not trying to show that, your Honor. This property was rented September 23rd, 1946, let us assume, for the first time. The registration for that property hadn't been recorded with the Housing Act Expediter, it was not filed until February 21, 1947. That was a date [52] of registration, previous to the 30-day period, and the Director was entitled under the Act to make such an order and to make it retroactive.

The Court: You will have to convince the Circuit Court of Appeals. I hold that this property was not occupied before this registration, so far as the evidence in this court shows. At the most you would be entitled to a refund of \$300.00, but I won't even give you that, because it appears that this property was not occupied before, so far as the evidence is concerned. That at the time the action was brought the Congress had passed a law stating that property which had not been occupied for a year preceding July 1st, 1947 is not subject to the regulation.

I hold that the property, never having been occupied before, the regulation stated the period during which the Director could issue an order making it retroactive, but he could not issue an order after the period stated in the regulation, when the evidence shows the property was never occupied before.

Therefore the order issued on May 19, 1947, was invalid on its face, and this court declares that an order which is invalid on its face has no validity at

all. And I may say that this is another one of the cases where the persons occupying the premises conclude to enrich themselves at the expense of the landlord, and I do not approve of that, and [53] I do not believe that such an action should be brought.

Judgment will be for the defendant, on the ground that the order is absolutely invalid on its face, because it was issued after the expiration of the 30 days, and no administrative finality attaches to an order invalid on its face. It is apparent that the registration was made at a certain time and that the Office of Price Administration had 30 days in which to make this order, and this was beyond that period.

Therefore the judgment will be for the defendant.

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 23rd day of August, A.D., 1948.

s/ HENRY A. DEWING,
Official Reporter.

[Endorsed]: Filed Aug. 30, 1948.

[Endorsed]: No. 12029. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. Sally Kaye, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed September 1, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12029

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

SALLY KAYE,

Defendant.

DOCUMENT ADOPTING STATEMENT OF
POINTS

To: Clerk of the Circuit Court of Appeals for the
Ninth Circuit.

Sir: Pursuant to subdivision 6 of Rule 19, Tighe
E. Woods, Housing Expediter, appellant herein,
adopts as his points on appeal, the statement of
points appearing in the transcript of record.

Respectfully submitted,

/s/ ED DUPREE,

General Counsel.

/s/ HUGO V. PRUCHA,

Assistant General Counsel.

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[Endorsed]: Filed September 20, 1948. Paul P.
O'Brien, Clerk.